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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/611,054	07/06/2000	Tom Gray	481340010023	5057

7590 11/03/2004

David B Cochran  
Jones Day Reavis & Pogue  
North Point  
901 Lakeside Avenue  
Cleveland, OH 44114

EXAMINER

KARMIS, STEFANOS

ART UNIT PAPER NUMBER

3624

DATE MAILED: 11/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 09/611,054	Applicant(s) GRAY ET AL.	
	Examiner Stefano Karmis	Art Unit 3624	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 05 August 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. This communication is in response to Applicant's amendment filed 05 August 2004.

#### ***Status of Claims***

2. Claims 13 and 31 are currently amended. Claim 2-12, 15-18, 20-30 and 33-36 are previously presented. Claim 1, 14, 19 and 32 are as originally filed. Therefore claims 1-36 are under prosecution in this application.

#### ***Summary of this Office Action***

3. Applicant's arguments filed 05 August 2004 have been fully considered and are not persuasive as discussed below. Therefore claims 1-36 stand rejected as stated in the previous office action, mailed 03 May 2004 and Applicant's request for allowance is respectfully declined.

#### ***Response to Arguments***

4. Claims 1-12, 15-30 and 33-36 stand rejected under 35 U.S.C. 102(e) as being anticipated by Kirkby et al. (hereinafter Kirkby) U.S. Patent 6,498,786 as stated in the previous office action mailed 03 May 2004.

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Regarding claim 1, Applicant asserts that Kirkby fails to teach or suggest endowing one or more bidding entities with an adjustably fixed amount of utility, wherein the fixed amount of utility is a measure representative of the possibility of failure due to lack of resources. However the Examiner respectfully disagrees. Kirkby discloses endowing one or more bidders with an adjustable amount of bandwidth based on the desired resources of the bidder (column 10, lines 7-15). The system taught by Kirkby will contains a necessary bandwidth needed to prevent failure and notifies the bidding entity in order to allow the bidder to place a WtP high enough to prevent failure if desired. Further, Kirkby also teaches lowering WtP to an amount just necessary to assure the desired bandwidth allocation based on the resources and thus prevent failure by ensuring that resources are allocated to those users prepared at any point of time to pay for them (column 10, lines 34-67). Therefore the Examiner believes this teaches the limitation of endowing one or more bidding entities with an adjustably fixed amount of utility, wherein the fixed amount of utility is a measure representative of the possibility of failure due to lack of resources and claim 1 stands rejected as stated in the previous office action.

In Applicant's arguments, there are multiple references to Applicant's specification. The Examiner would like to remind the Applicant that limitations from the specification are not read into the claims and therefore claims must be interpreted as broadly as their terms reasonably allow *In re Zletz*, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989).

Claims 2-18 are dependent upon claim 1 and stand rejected with claim 1. Independent claim 19 discloses similar limitations to those of claim 1 and as a result is rejected similarly to

claim 1. Claims 20-36 are dependent upon claims 1 or 19 and therefore are rejected based on dependency.

***Conclusion***

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stefano Karmis whose telephone number is (703) 305-8130. The examiner can normally be reached on M-F: 8-5.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on (703) 308-1065. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Respectfully Submitted  
Stefano Karmis  
22 October 2004

*Alan T. Borline*  
PRIMARY  
AU. 3624